

United States  
Circuit Court of Appeals

For the Ninth Circuit.

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CHAS. B. BLESSING, as Trustee of the Estate of  
PACIFIC MOTOR CAR COMPANY, a Cor-  
poration, Bankrupt,  
Petitioner,  
vs.

G. A. BLANCHARD and W. H. WINN,  
Respondents.

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Petition for Revision

Under Section 24b of the Bankruptcy Act of Congress,  
Approved July 1, 1898, to Revise, in Matter of Law,  
a Certain Order of the United States District  
Court for the Northern District of  
California, First Division.

Filed

JAN - 6 1915

F. D. Monckton,  
Clerk.



No. 2530

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**Circuit Court of Appeals**

**For the Ninth Circuit.**

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# INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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RECORD ACCOMPANYING PETITION FOR  
REVISION.

*In the District Court of the United States in and for  
the Northern District of California, First Division.*

No. 8722—IN BANKRUPTCY.

In the Matter of PACIFIC MOTOR CAR COMPANY, a Corporation,

Bankrupt.

**Praeceptum for Transcript of Record for Use on  
Petition for Revision.**

To the Clerk of the Above-entitled Court:

Please prepare a transcript of the record in the above-entitled matter to be used by the undersigned trustee on petition for revision by the United States Circuit Court of Appeals for the Ninth Circuit, under Section 24b of the Bankruptcy Act, of that certain order of the above-entitled court made and entered herein on the 23d day of October, 1914, affirming the order of A. B. Kreft, Esq., a referee in bankruptcy of the above-entitled court, made on the 24th day of June, 1914, allowing as priority under Section 64b (4) of the Bankruptcy Act the claims of G. A. Blanchard for \$145.20, and of W. H. Winn for \$245.00.

Please include in the said transcript of record the following documents:

- (1) This Praeceptum.
- (2) Claim of G. A. Blanchard, to be designated  
“Exhibit ‘A’ to Petition for Revision.”

- (3) Claim of W. H. Winn, to be designated  
“Exhibit ‘B’ to Petition for Revision.”
- (4) Certificate of referee on review, to be designated  
“Exhibit ‘C’ to Petition for Revision.”
- (5) Order of District Judge, to be designated  
“Exhibit ‘D’ to Petition for Revision.” [1\*]

Please omit from all documents, except this Praecipe, the title of court and cause, and refer to the same merely as “Title of Court and Cause”; and also omit the notaries’ statements on the said claims, and refer to the same merely as “Duly subscribed and sworn to”; and also omit all endorsements on the backs of the said documents, with the exception of filing marks and the allowances of the referee in bankruptcy; and also omit the letters of attorney on the backs of the said claims.

Dated November 30, 1914.

HELLER, POWER & EHRMAN,  
REUBEN G. HUNT,

Attorneys for Chas. B. Blessing, Trustee of the Estate of the Above-named Bankrupt.

Receipt of a copy of the foregoing Praecipe is hereby admitted this 30th day of November, 1914.

R. H. COUNTRYMAN,  
Attorney for the Said G. A. Blanchard and W. H. Winn.

[Endorsed]: Filed Nov. 30, 1914. At 5 o’clock and — min. P. M. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [2]

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\*Page-number appearing at foot of page of original certified Record.



**Exhibit "A" to Petition for Revision [Claim of G. A. Blanchard].**

(Title of Court and Cause.)

At San Francisco, in said Northern District of California, on the 27th day of May, A. D. 1914, came G. A. Blanchard, of San Francisco, in the county of San Francisco, in said Northern District of California, and made oath and says that Pacific Motor Car Company, the person whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition, and still is, justly and truly, indebted to said deponent, in the sum of One Hundred and Forty-five and 20/100 (\$145.20) Dollars; that the consideration of said debt is as follows:

Claimant was employed by said bankrupt as General Manager of said bankrupt, at an agreed compensation or wages or salary of Three Hundred (\$300) Dollars per month. That during the month of April, 1914, this claimant performed work and rendered services for said bankrupt. That of said sum of Three Hundred Dollars there has been paid the sum of \$154.80, and no more, leaving a balance due this claimant for his wages or compensation for said month of April, 1914, the sum of \$145.20.

That no part or portion of said sum has been paid. That no part of said debt has been paid. That said sum of \$300 was the wages or salary of this claimant for said month of April, 1914, and said balance of \$145.80 is the unpaid portion of claimant's wages

and salary for said month of May, 1914. That there are no setoffs or counterclaims to the same. That no note has been received for such account, nor any judgment rendered thereon; and that deponent has not, nor has any person by his order, or to his knowledge or belief, for his use, had or received any manner of security for said debt whatever. Claimant claims a *preferred* [3] to the full amount of \$145.20, for the reason that claimant was working for wages and performed services for said bankrupt within a period of sixty (60) days prior to the adjudication herein.

(Signed) G. A. BLANCHARD.

(Duly subscribed and sworn to.)

[Endorsed]: Allowed for \$145.20. Priority. June 24, 1914. A. B. Kreft, Referee. Filed Jun. 2, 1914, at 10 o'clock and — min. A. M. A. B. Kreft, Referee in Bankruptcy. [4]

**Exhibit "B" to Petition for Revision [Claim of W. H. Winn].**

(Title of Court and Cause.)

At San Francisco, in said Northern District of California, on the 26th day of May, A. D. 1914, came W. H. Winn, of the City of San Francisco, in the County of San Francisco, in said Northern District of California, and made oath, and says that Pacific Motor Car Company, the person whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition, and still is, justly and truly indebted to said deponent, in the

sum of Three Hundred and 20/100 (\$320.00) Dollars; that the consideration of said debt is as follows:

Claimant was employed by said bankrupt as Superintendent of shop, and that for more than eighteen (18) months last past he has been the Superintendent of the shop of said bankrupt, working in and about the shop in the repair of automobiles and in the service department of said bankrupt; that the salary or compensation of claimant during said period of eighteen months last past has been the sum of One Hundred and Fifty (\$150) Dollars per month, payable at the end of each and every calendar month. That for the month of March, 1914, said claimant received the sum of \$130.00, leaving due, owing and unpaid to him on account of said monthly salary for said month of March, the sum of \$20.00. That no part or portion of the salary of this claimant for the month of April, 1914, has been paid, and no part or portion of his said salary for the month of May, 1914, has been paid, there being due, owing and unpaid to claimant at the present time from said bankrupt, the sum of \$320.00; that no part of said debt has been paid; that there are no offsets or counterclaims to the same. That on April 30th, 1914, claimant was notified to continue work and to keep what men he needed in said shop and claimant has reported for duty on each [5] day since said 1st day of May, 1914. That no note has been received for such account, nor any judgment rendered thereon; and that deponent has not, nor has any person by his order, or to his knowledge or belief, for his use, had or received any manner of

security for said debt whatever. Claimant claims a preferred claim to the full amount of said \$320.00 for the reason that claimant was working for wages and performed services for said bankrupt within a period of sixty (60) days prior to the adjudication herein.

(Signed) WM. H. WINN.

(Duly subscribed and sworn to.)

[Endorsed]: Allowed for \$245.00. Priority. June 24/14. A. B. Kreft, Referee. Filed Jun. 2, 1914, at 10 o'clock and ——— min. A. M. A. B. Kreft, Referee in Bankruptcy. [6]

**Exhibit "C" to Petition for Revision.**

(Title of Court and Cause.)

No. 8722.

**Report of Referee on Petitions of Trustee to Review Orders Allowing Claims of G. A. Blanchard and W. H. Winn.**

To the Honorable MAURICE T. DOOLING, Judge of the District Court of the United States in and for the Northern District of California:

The undersigned, referee in bankruptcy, to whom was referred the above-entitled matter, respectfully certifies and reports:

That on June 24, 1914, orders were made herein allowing a claim of G. A. Blanchard for \$145.20 and a claim of W. H. Winn for \$245, as claims entitled to priority under Section 64 (4) of the Bankruptcy Act, such orders being endorsed upon the claims. The trustee feeling aggrieved thereat, on June 29, 1914,

filed petitions to review said orders. R. G. Hunt, Esq., appeared as counsel for trustee, and R. H. Countryman, Esq., as counsel for claimants.

The claim of G. A. Blanchard recited that the claimant was employed by said bankrupt as general manager at an agreed compensation or wages or salary of \$300 per month. The claim of W. H. Winn recites that the claimant was employed by said bankrupt "as superintendent of the shop, . . . working in and about the shop in the repair of automobiles and in the service department of said bankrupt," and that his salary was \$150 a month.

The testimony shows that Winn had authority to hire and discharge men in his department, but was subject to the control and direction of Blanchard as general manager; that he performed labor about the shop in like manner as the men working under him, in the repair of automobiles and general shop work. Blanchard, [7] as general manager, had power to hire and discharge men, and to superintend the salesmen, himself working in the capacity of a salesman. He also had the general control and direction of the workmen in the employ of the bankrupt in all its departments. He was not an officer, director or stockholder of the bankrupt, and received no compensation for his services other than a salary of \$300 a month.

Counsel for trustee contends, first, that the wages of these employees exceeded a total amount of \$1500 a year each, and that they are not, therefore, entitled to priority, by virtue of the provision of section 1, subd. 27; that such section must be read in connec-



tion with sec. 64b. (4). Sec. 1 (27) reads: “ ‘Wage-earner’ shall mean an individual who works for wages, salary, or hire, at a rate of compensation not exceeding \$1500 per year.” Sec. 64b (4), defining debts which are entitled to priority, reads: “Wages due to workmen, clerks, traveling or city salesmen or servants which have been earned within three months before the date of the commencement of the proceedings, not to exceed \$300 for each claim.”

There is some authority in support of the contention that where the wages exceed \$1500 a year, priority cannot be granted. In *re Rose*, 1 A. B. R. 73; and the recent case of *In re Becker & Company*, opinion by the referee, 31 A. B. R. 596.

The decided weight of authority, however, is that the provisions of section 1 (27) have reference to those who may be proceeded against in an involuntary proceeding, and is not controlling upon the question as to who is entitled to priority.

*Remington on Bankruptcy*, p. 1338, sec. 2171;

*In re Scanlan*, 3 A. B. R. 202;

*In re Carolina Cooperage Co.*, 3 A. B. R. 154;

*In re Gurewitz*, 10 A. B. R. 350;

*In re Smith*, 11 A. B. R. 647. [8]

In my opinion the provision of section 1 (27) should not be read in connection with sec. 64b (4) in determining priority of labor claims.

The second contention of the trustee is that neither of said claimants is a workman, clerk or servant within the meaning of sec. 64b (4).

As to Blanchard, he is not, in my opinion, a workman or a clerk, and as to whether he is a servant

within the meaning of the section, I have grave doubt.

In the case of *In re Calwell*, 21 A. B. R. 236, the Court says with reference to the scope to be given to the word "servant" in this section:

"A definition of the word which is very comprehensive and meets my view as to its legal meaning is that given in 20 Am. & Eng. Encyclopedia of Law, 2d edition, 11: 'A servant is one who is employed to render personal services to his employer otherwise than in the pursuit of an independent calling, and in such service remains entirely under the control and direction of the latter; . . . The relation of master and servant exists where the employer has the right to select the employee; the power to remove or discharge him; the right to direct both what work shall be done and the way and manner in which it shall be done.' "

It has been shown in this case that the capital stock of this corporation is owned by one individual. No doubt Blanchard was subject to his control in all things. He had no voice in the policies of the company, not being a stockholder, officer or director thereof, and in my opinion is a servant, according to the above definition. Priority to wage claimants is limited to \$300. If the claimant is otherwise entitled to priority, it is immaterial whether the \$300 is earned within one month or within three months of the commencement of the proceedings.

The other view as to the meaning of the word "servant" is [9] that it is not as broad as the common-law definition of that word; that the words

“workman, clerk and servant” are to be given a common, every-day, popular meaning, and this does not include high-salaried officers of a corporation.

In re Smith, 11 A. B. R. 646;

Grubbs-Wiley Grocery Co., 2 A. B. R. 444;

In re Carolina Cooperage Co., 3 A. B. R. 157;

Remington on Bankruptcy, p. 136, sec. 2169;

In re Albert A. Brown & Company, 22 A. B. R. 496; in which latter case priority was denied to the claim of a manager in charge of the branch office of a broker.

In some of the cases cited in which the word “servant” is given a more restricted meaning than the common-law definition it appeared that the claimant was closely identified with the business of the bankrupt, being either an officer, director or stockholder therein, and in a measure responsible for the policies of the bankrupt and for the contraction of his debts. It is my opinion that the word “servant” should be given a restricted meaning in line with the cases which hold that the word “servant” should be given its “common, every-day, popular meaning.”

The act not defining the word “servant,” and section 125, defining “wage-earner,” not applying, each case must be determined by the character of the services rendered.

As to Blanchard, because of the absence of any financial or controlling interest in the business, he being only a salaried employee, I granted priority to his claim, but as stated, not without grave doubt as to whether the facts shown bring him within the meaning of the section.



As to Winn, while he had charge of the workmen in his department, he worked along with them, performing manual labor as a mechanic, and in my opinion comes within the meaning of the [10] words "workman and servant."

Respectfully submitted.

San Francisco, September 17th, 1914.

(Signed) ARMAND B. KREFT,  
Referee.

The following papers are transmitted herewith:

Claim of G. A. Blanchard;

Claim of W. H. Winn;

And petitions to review said claims.

[Endorsed]: At 4 o'clock P. M. Filed Sep. 17, 1914. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [11]

**Exhibit "D" to Petition to Revision [Order Affirming Order of Referee].**

(Title of Court and Cause.)

No. 8722.

REUBEN G. HUNT, Esq., Attorney for Trustee.

ROBERT H. COUNTRYMAN, Esq., Attorney for Claimants.

The order of the Referee allowing the claims of C. A. Blanchard and W. H. Winn as claims entitled to a priority is hereby affirmed.

October 23d, 1914.

(Signed) M. T. DOOLING,  
Judge.

[Endorsed]: At 5 o'clock P. M. Filed Oct. 23, 1914. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [12]

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**[Certificate of Clerk U. S. District Court to Transcript of Certain Papers.]**

I, W. B. Maling, Clerk of the District Court of the United States of America, for the Northern District of California, do hereby certify the foregoing 12 pages, numbered from 1 to 12 inclusive, to contain full, true, and correct copies of Praeipe, Claim of G. A. Blanchard, Claim of W. H. Winn, Certificate of Referee on Review and Order of District Judge as the same now remain on file and of record in this office, in the matter of Pacific Motor Car Company, a corporation, Bankrupt, No. 8722; said copies having been prepared pursuant to and in accordance with "Praeipe" (copy of which is embodied herein).

I further certify that the cost for preparing the above-mentioned copies is the sum of Six Dollars (\$6.00), and that the same has been paid to me by Reuben G. Hunt, Esq., Attorney for Trustee.

In witness whereof, I have hereunto set my hand and the seal of said District Court this 21st day of December, 1914.

W. B. MALING,  
Clerk.

By C. W. Calbreath,  
Deputy Clerk.

[Ten Cent Internal Revenue Stamp Canceled Dec. 21, 1914. C. W. C.] [13]

*In the United States Circuit Court of Appeals for  
the Ninth Circuit.*

No. —.

CHAS. B. BLESSING, as Trustee of the Estate of  
PACIFIC MOTOR CAR COMPANY, a Cor-  
poration, Bankrupt,

Petitioner,

vs.

G. A. BLANCHARD and W. H. WINN,

Respondents.

**Petition for Revision.**

To the Honorable Judges of the United States Cir-  
cuit Court of Appeals for the Ninth Circuit:

The petition of Chas. B. Blessing, as trustee of the  
estate of Pacific Motor Car Company, a corporation,  
bankrupt, respectfully shows unto this Court:

I.

That on the 15th day of May, 1914, the said Pacific  
Motor Car Company, a corporation, filed in the Dis-  
trict Court of the United States in and for the North-  
ern District of California, its voluntary petition in  
bankruptcy, and thereafter and on the 21st day of  
May, 1914, the said District Court made an order  
adjudicating the said corporation a bankrupt upon  
the said petition, and referring further proceedings  
in the matter of the administration of the estate of  
the said bankrupt to A. B. Kreft, Esq., a referee in  
bankruptcy of the said District Court. Thereafter  
and on the 3d day of June, 1914, the said Chas. B.

Blessing was appointed trustee of the estate of the said bankrupt by its creditors at their first meeting, which said appointment was thereupon and on said 3d day of June, 1914, approved by the said referee. Thereafter and on the said 3d day of June, 1914, the said Chas. B. Blessing qualified as such trustee, and ever since the said 3d [14] day of June, 1914, the said Chas. B. Blessing has been, and now is, the appointed, qualified and acting trustee of the estate of the said bankrupt.

## II.

That on the 2d day of June, 1914, the said G. A. Blanchard and the said W. H. Winn filed in the said bankruptcy matter with the said referee their claims against the estate of the bankrupt in the sums of \$145.20 and \$320.00, respectively, asserting the right to have the said claims allowed as priority in the said amounts under the provisions of Section 64b (4) of the Bankruptcy Act, true copies of which said claims duly certified by the clerk of the said District Court are hereto attached and marked Exhibits "A" and "B," respectively.

## III.

That thereafter and on the 24th day of June, 1914, the said referee made an order allowing as priority under Section 64b (4) of the Bankruptcy Act the said claim of G. A. Blanchard for the sum of \$145.20 and the said claim of W. H. Winn for the sum of \$245.00.

## IV.

That thereafter and on the 29th day of June, 1914, the said trustee in bankruptcy filed with the said ref-

erree his petition for the review by the said District Court of the said order of the said referee, and thereafter and on the 17th day of September, 1914, the said referee filed in the said District Court his certificate on such review, a true copy of which said certificate duly certified by the clerk of the said District Court and is hereto attached and marked Exhibit "C."

### V.

That thereafter and on the 23d day of October, 1914, the said District Court made an order in the said matter affirming the said order of the said referee, a true copy of which said order [15] duly certified by the clerk of said District Court is hereto attached and marked Exhibit "D."

Your petitioner charges the fact to be that said District Court erred as a matter of law in affirming the said order of the said referee for the following reasons, to wit:

(a) The said G. A. Blanchard was not a workman, clerk, traveling salesman or servant of the bankrupt at the time the services mentioned in his said claim were performed within the meaning of Section 64b (4) of the Bankruptcy Act, and the said claim should have been allowed as an ordinary claim only and not one entitled to priority under the said Section of the Bankruptcy Act.

(b) The said W. H. Winn was not a workman, clerk, traveling salesman or servant of the bankrupt at the time the services mentioned in his said claim were performed within the meaning of Section 64b (4) of the Bankruptcy Act, and the said claim should

have been allowed as an ordinary claim only and not one entitled to priority under the said Section of the Bankruptcy Act.

WHEREFORE, your petitioner, as such trustee in bankruptcy, feeling aggrieved because of said order of said District Court, asks that the same may be revised in matter of law by this Honorable Court as provided in Section 24b of the Bankruptcy Act and the Rules of Practice, in such cases provided and that the said order may be reversed, and for such other and further relief as may be just and proper.

Dated December 21st, 1914.

REUBEN G. HUNT,

HELLER, POWERS & EHRMAN,

Attorneys for Chas. B. Blessing, Trustee of the  
Estate of Pacific Motor Car Company, a Corporation, Bankrupt. [16]

State of California,

City and County of San Francisco,—ss.

I, Chas. B. Blessing, the trustee of the estate of the Pacific Motor Car Company, a corporation, bankrupt, the petitioner mentioned and described in the foregoing petition, do hereby make solemn oath that the statements therein contained are true according to the best of my knowledge, information and belief.

CHAS. B. BLESSING.



Subscribed and sworn to before me this 21st day  
of December, 1914.

[Seal] L. H. CONDON,  
Notary Public in and for the City and County of San  
Francisco, State of California. [17]

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[Endorsed]: No. 2530. United States Circuit  
Court of Appeals for the Ninth Circuit. Chas. B.  
Blessing, as Trustee of the Estate of Pacific Motor  
Car Company, a Corporation, Bankrupt, Petitioner,  
vs. G. A. Blanchard and W. H. Winn, Respondents.  
Petition for Revision Under Section 24b of the  
Bankruptcy Act of Congress, Approved July 1, 1898,  
to Revise, in Matter of Law, a Certain Order of the  
United States District Court for the Northern Dis-  
trict of California, First Division.

Filed December 21, 1914.

FRANK D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Meredith Sawyer,  
Deputy Clerk.

*In the United States Circuit Court of Appeals for  
the Ninth Circuit.*

No. —

CHAS. B. BLESSING, as Trustee of the Estate of  
PACIFIC MOTOR CAR COMPANY, a Cor-  
poration, Bankrupt,

Petitioner,

vs.

G. A. BLANCHARD and W. H. WINN,

Respondents.

**Notice of Filing of Petition for Revision.**

To G. A. Blanchard, Esq., to W. H. Winn, Esq., and  
to R. H. Countryman, Their Attorney:

You and each of you are hereby notified that on the 21st day of December, 1914, at 2:30 o'clock P. M., we will present and file in the clerk's office of the United States Circuit Court of Appeals for the Ninth Circuit, at the United States Postoffice Building, Seventh and Mission Streets, San Francisco, California, the petition of Chas. B. Blessing, as trustee of the estate of Pacific Motor Car Company, a corporation, bankrupt, for revision by the said Circuit Court of Appeals of the order of the District Court of the United States, in and for the Northern District of California, made on the 23d day of October, 1914, affirming the order of A. B. Kreft, Esq., a referee in bankruptcy of the said District Court, heretofore and on the 24th day of June, 1914, made allowing as priority under Section 64b (4) of the



Bankruptcy Act the claims of G. A. Blanchard for \$145.20 and of W. H. Winn for \$245.00.

Dated December 21st, 1914.

HELLER, POWERS & EHRMAN,  
REUBEN G. HUNT,

Attorneys for Chas. B. Blessing, Trustee of the  
Estate of the Said Bankrupt.

Receipt of a copy of the foregoing notice of filing  
of petition for revision and said petition for revision  
is hereby admitted this 21st day of December, 1914,  
at 1:55 P. M.

R. H. COUNTRYMAN,  
Attorney for G. A. Blanchard and W. H. Winn.

[Endorsed]: No. 2530. In the Circuit Court of  
Appeals of the United States, Ninth Circuit. Chas.  
B. Blessing, Petitioner, vs. G. A. Blanchard et al.,  
Respondents. Notice of Filing of Petition for Re-  
vision. Filed Dec. 21, 1914. F. D. Monckton, Clerk.

